

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1432

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 77-1432

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P/S

UNITED STATES OF AMERICA,

Appellee,

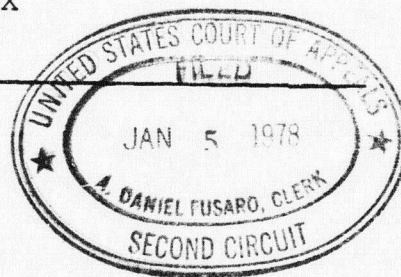
-against-

RICHARD PAGLIALONGA,

Appellant.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

APPENDIX



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Attorneys for Defendant-Appellant

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UNITED STATES COURT OF APPEALS
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-against-

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A F T E R N O O N S E S S I O N2:00 p.m.CHARGE OF THE COURT

THE COURT: Mr. Wilson and members of the jury, good afternoon.

We are now at that stage of this trial where you are about to undertake your final function as jurors. Here you perform one of the most sacred obligations of citizenship, acting as ministers of justice.

You are to discharge this final duty in an attitude of complete impartiality and fairness as I emphasized when you were first selected, without bias or prejudice for or against the government or the defendants as parties to this controversy.

Let me state the fact that the government is a party entitles it to no greater consideration than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration. All parties, individuals and the government alike, stand as equals before the bar of justice in this court and in your deliberations.

Your final role here is to decide and pass

1 upon the fact issues of this case. You are the sole and
2 exclusive judges of the fact. You determine the weight
3 of the evidence, you appraise and decide credibility,
4 truthfulness of each of the witnesses. You draw the reason-
5 able inferences or conclusions from the evidence, and you
6 resolve such conflicts as there may be in the evidence.
7

8 My final function here is to instruct you as
9 to the law, and it is your duty to accept my instructions
10 as to the law and then to apply them to the facts of the
11 case as you may find them to be.

12 You are not to consider any one instruction
13 I give you alone as stating the law but you must consider
14 all of my instructions taken together as a whole.

15 With respect to any fact matter, it is your
16 recollection and yours alone that controls. I have said
17 that several times. Anything that the lawyers either for
18 the government or the defendants may have said with respect
19 to matters in evidence or testimony, whether they said it
20 during the trial in a question or in arguments or in summa-
21 tion is not to be substituted for your own recollection
22 of the evidence.

23 Anything I might say during the trial or
24 anything I might refer to during the course of giving these
25 instructions as to any testimony or any matter in evidence

is not to be taken in place of your own recollection.

If I discuss any fact or refer to any factual matter in giving my instructions, I assure you that is for illustrative purposes only and you are not to assume from the fact that I made such a factual reference that I think such a fact has been proved or may have been proved or may not have been proved.

The factual decisions in this case I emphasize most strongly are for the jury and the jury only. Not the lawyers, not the Court.

Each of the lawyers not only has the right but it is their duty to make objections and press whatever legal theories or arguments they may have. They are simply performing their duty. And any evidence as to which an objection was sustained by the Court or anything ordered stricken out by the Court must be disregarded by you in its entirety.

It is not my function here to favor one side or the other or to indicate to you jurors in any way that I have any opinion as to the truthfulness of any witness, or as to the guilt or innocence of a defendant. That is your function and yours alone to decide and I leave it entirely with you.

So please don't reach any conclusion on any-

1 thing I may have said or done or that I may have some
2 opinion in matters concerning this case or that I may have
3 some attitude or that I might tend to favor one side or
4 the other in the case. I do not.
5

6 As I told you at the beginning, the indictment
7 here itself is no evidence of the crimes charged. Instead
8 an indictment is merely or the method or procedure under
9 our law whereby a person or persons accused of a crime by
10 a grand jury are brought into court to have his or her case
11 determined by a trial jury such as yourselves.

12 Therefore, the indictment must be given no
13 evidentiary value. It shall not be treated by you as
14 any evidence or proof of any defendant's guilt and no weight
15 or significance whatsoever is to be given to the fact that
16 an indictment has been returned. It shall be treated by
17 you only as an accusation.

18 Each of the defendants has pleaded not guilty
19 and thus the government has the burden of proving the
20 charges beyond a reasonable doubt before anyone may be
21 convicted of any crime.

22 The defendants do not have to prove their
23 innocence. On the contrary, they are presumed to be inno-
24 cent of the accusations contained in the indictment. This
25 presumption of innocence was in their favor at the start

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of the trial as I believe I told you before. It continued in their favor throughout the entire trial and it is in their favor now and it remains in their favor during the course of your deliberations in the jury room.

The presumption of innocence is removed as to a particular count or as to a particular defendant only if and when you, the jury, are satisfied that the government has sustained its burden of proving the guilt of that particular defendant beyond a reasonable doubt as to that count that you are then considering.

Of course, unless you are so convinced, you must find that particular defendant not guilty as to that count.

As I mentioned earlier to you, there are now before you two counts and you will decide each of them separately according to the evidence, following my instructions as to the law.

In Count 1 both Richard Paglialonga and Ilene Baker are before you for your consideration and you will reach separate verdicts as to Count 1 with respect to each of those persons separately.

In Count 2 only Mr. Richard Paglialonga is named and you will reach a separate verdict as to Count 2, considering it separately with respect to him, wholly

without regard to whether or not guilt has been proven beyond a reasonable doubt in Count 1.

You are being called upon to make three separate decisions, each standing on its own feet.

Now, the question naturally comes up, what is a reasonable doubt?

Members of the jury, those words almost define themselves. It is a doubt founded on reason arising out of the evidence in the case or the lack of evidence.

It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable doubt is a doubt that appeals to your reason, to your common sense, to your experience. It is not caprice or whim or speculation or conjecture or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

If after a fair and impartial consideration of all the evidence you can candidly and honestly say that you are not satisfied of the guilt of a particular defendant as to a particular count that you are then considering, you don't have an abiding conviction of that defendant's guilt on that particular charge, in sum, if you have such a doubt as would cause you as prudent persons to hesitate before acting in matters of importance to yourselves, then

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2 you have a reasonable doubt and in that circumstance it
3 is your duty to acquit that particular defendant whose case
4 you are then considering on that particular charge. That
5 is to say, find a verdict of not guilty on that count as
6 to that defendant.

7 On the other hand, if after such an impartial
8 and fair consideration of all the evidence you can candidly
9 and honestly say that you do have an abiding conviction of
10 the defendant's guilt, such a conviction as you would be
11 willing to act upon in important and weighty matters in
12 the personal affairs of your own lives, then you have no
13 reasonable doubt and under those circumstances it is your
14 duty to convict.

15 Reasonable doubt does not mean a positive
16 certainty or beyond all possible doubt. If that were the
17 rule few men or women, however guilty they might be, would
18 never be convicted because it is practically impossible for
19 a person to be absolutely and completely convinced of any
20 disputed fact which by its nature is not susceptible of
21 mathematical proof.

22 For that reason the law in a criminal case
23 says that it is sufficient if the guilt of a particular
24 defendant is established beyond a reasonable doubt, not
25 beyond all possible doubt.

Now, Mr. Paglialonga and Miss Baker are the only persons on trial before you. They are the only persons with respect to whom you will be asked to announce a verdict and, as I said earlier, you will announce a separate verdict as to each and a separate verdict as to Count 1 and Count 2 with respect to Mr. Paglialonga.

The case of Mr. Lacey is no longer before you and you are not to speculate as to this. The fact that he is no longer before you bears no part whatever in your considerations and deliberations.

In considering the case of Paglialonga and Baker you may have to determine the nature and extent of the participation and activities of Edward White, Nelson Thompson, also known as Skip, and Marsha Renee Brown and Harvey Cohen, or others whom you may find to have been conspirators.

You will consider their actions simply for the purposes of determining if a conspiracy came into existence in accordance with the principles which I will discuss with you later on in these instructions.

In this connection you are not to concern yourself with or speculate on the reasons why only Mr. Paglialonga and Miss Baker are on trial before you today, or why the other defendants named in the indictment

are not being tried here with them. Those are matters of court procedure which only concern the Court and are not for you to consider.

You will have to bear in mind that guilt is personal. Whether or not a particular defendant on trial before you has been proved guilty beyond a reasonable doubt with respect to any count in the indictment must be determined separately with respect to him or her, solely on the evidence presented against him or her, or the lack of evidence, and without regard to the evidence as to the guilt of any of these other persons that I have mentioned.

For your guidance in considering evidence I will tell you there are two classes of evidence recognized and admitted in courts of justice, upon either of which jurors may find an accused person guilty of a crime.

One is called direct evidence and the other is called circumstantial evidence.

Direct evidence tends to show the fact in issue without any need for any other amplification. Although, of course, there is always the question as to whether it is to be believed.

Circumstantial evidence is evidence that tends to show facts from which the fact in issue may reasonably be inferred. It is evidence which tends to prove the fact

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2 in dispute by proof of other facts which have a legitimate
3 tendency to lead your mind to infer or conclude the fact
4 sought to be established is true.

5 There is a traditional example given in the
6 courthouse that has been used to illustrate circumstantial
7 evidence. Let us assume that we were trying this case
8 in one of the courtrooms on the upper floors of the building
9 which have windows that look out onto the street. Sometimes
10 it is difficult to tell merely by looking out the window
11 of a courtroom such as those upstairs which are high in
12 the building, whether it is raining out or not.

13 Let's assume that you look out the window
14 and it is a cloudy and the sun isn't shining. You see
15 people passing by in the street below and they have their
16 umbrellas up. You usually will come to the conclusion
17 that it must be raining.

18 Here you have direct evidence, the evidence
19 of your own senses; you can see the umbrellas up and that
20 fact constitutes circumstantial evidence from which you
21 are entitled under the surrounding circumstances of the
22 example I gave you to conclude that it must be raining.

23 In other words, circumstantial evidence con-
24 sists of facts proved from which the jury may infer or
25 conclude by the process of reasoning that because this fact

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exists, the other facts which are in issue have been proved.

Circumstantial evidence if believed is of no less value than direct evidence, because in any case you must be convinced beyond a reasonable doubt of the guilt of the defendant before he or she may be convicted on any charge that you may be considering.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, all facts or testimony which have been admitted to or stipulated.

I told you earlier that a stipulation for the record was the equivalent of testimony or evidence and will be so treated by you.

Statements or arguments of attorneys, however, are not evidence in the case. But when the attorneys for both sides stipulate or agree as to a fact, such as to what the testimony of a person such as a chemist would be if that person were brought in here to testify under oath, you may accept the stipulation of evidence and may regard that fact as proved.

However, you are the judges of all the issues of fact and it is for you to determine all the factual issues in the case.

In determining what testimony you will accept

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2 as true you make your own evaluation of the testimony given
3 by each of the witnesses. You will determine for your-
4 selves what you believe to be the truth and the degree of
5 weight or significance which you choose to give to that
6 testimony.

7 The testimony of a witness may fail to conform
8 to the facts as they occurred because the witness may in-
9 tentionally tell a falsehood or because the witness didn't
10 accurately hear or see what was testified about; or because
11 his or her recollection of the events is faulty or because
12 he or she hasn't expressed himself or herself clearly in
13 giving testimony.

14 There is no magic formula for evaluating
15 testimony. You take with you into the jury room and you
16 use in your deliberations all of your experience and back-
17 ground of your everyday lives. You use your common sense.
18 Each of you in your everyday experience determines for your-
19 selves the reliability of statements made to you by other
20 people and the same tests you use in your everyday dealings
21 are the tests which you apply in your deliberations as
22 jurors.

23 You may, of course, consider the interest
24 or lack of interest of any witness in the outcome of the
25 case. A witness who is interested in the outcome is not

1 necessarily unworth of belief, but the interest of a
2 witness is a factor or possible motive which you may con-
3 sider in determining the weight and credibility to be
4 given to his or her testimony.
5

6 In weighing testimony you consider whether
7 the testimony of a witness is corroborated or borne out
8 by the testimony of others, or by documentary evidence, or
9 by exhibits, or by circumstances as shown by the other
10 proof in the case.

11 You may consider the manner in which the
12 witness gave his or her testimony on the stand; the appear-
13 ance and conduct of the witness, his or her demeanor.
14 The opportunity the witness had to observe and remember the
15 facts concerning which he or she testified and the probability
16 or improbability of the testimony in the light of all the
17 other events in the case.

18 These are all items to be taken into your
19 consideration in determining the truthfulness and weight,
20 if any, that you will assign to that witness' testimony.
21 If these considerations make it seem to you that there is
22 a discrepancy in the evidence, you will have to consider
23 whether this can be reconciled by fitting the conflicting
24 items together and if that is not possible, you should
25 in determining which of the conflicting versions, if any,

you will accept as true.

If a witness is shown to have knowingly testified falsely concerning any material matter in a trial, you have the right to distrust that witness' testimony in other things. And you may reject all of the testimony of that witness, or you can give it or such parts of it such credence as you think it deserves.

The testimony of an admitted perjurer should always be considered with caution and weighed with great care.

You are not obliged to accept testimony even though the testimony is uncontradicted and the witness is not impeached. I use the word impeached, I mean by that the person's testimony is shown to be not worthy of belief.

You may decide because of the witness' bearing and demeanor, because of the inherent probability of his or her testimony or for other reasons which you regard as sufficient that such testimony is not worthy of belief.

On the other hand, the government is not required to prove the essential elements of the offenses as defined here this afternoon, by any particular number of witnesses. The testimony of a single witness may be sufficient, if believed by you, to convince you beyond a

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2 reasonable doubt of the existence of an essential element
3 of the offense charged.

4 A few words about the testimony of Marsha
5 Renee Brown and Harvey Cohen who were called by the govern-
6 ment as witnesses in this trial.

7 By their own testimony, Miss Brown and Cohen
8 were accomplices in the crimes charged against these
9 defendants. And, by their own testimony, they participated
10 in other crimes.

11 The government is frequently called upon to
12 use accomplices as witnesses. Often it has no choice be-
13 cause the government must rely on such witnesses to
14 transactions as there may be.

15 It's not frequent that people of good reputa-
16 tion are witnesses to and participants in criminal activities.
17 The government frequently must use such testimony or else
18 it would be difficult or impossible to detect or prosecute
19 wrongdoers.

20 There is no requirement in this court that
21 the testimony of an accomplice be corroborated although
22 the government contends in this case there is corroboration,
23 the passports and statements and airline tickets, airline
24 records, the phone bills and other documents.

25 Whether you find it so is a factual question

for you to decide based upon the whole trial record. But a conviction may rest on the uncorroborated testimony of one or more accomplices if you believe them and find their testimony credible and if you are satisfied beyond a reasonable doubt of the guilt of the defendant whose case you are then considering of the particular charge you are then considering.

The fact a witness was an accomplice should be considered by you as bearing against his or her credibility. It doesn't follow that just because a person has acknowledged participation in a crime, in the crimes charged against these defendants or other crimes, that he or she is not capable of giving a truthful version of what occurred.

The testimony of an accomplice should, however, be viewed with greater caution by you and scrutinized carefully by you. Was the testimony inspired by any motive of reward of self-interest or hostility to the defendants so the accomplices gave a false or slanted story?

If you find it was false or slanted you ought to unhesitatingly reject it. However, if after a cautious and careful examination of the witness' testimony and after having observed and considered his or her demeanor or behavior on the stand as they answered the questions, and the

1 nature of the testimony given by him or her, you are
2 satisfied that a particular witness told the truth as to
3 certain events, then there is no reason why you should not
4 accept it as truthful and credible and act on it accordingly.
5

6 It's also permissible for the government to
7 enter into an agreement whereby promises not to prosecute
8 a particular individual for specific crimes in turn for
9 that person's promise to testify truthfully against others.
10 It's also a possibility that such an agreement, which is
11 clearly beneficial to the accomplice, might create a bias
12 on his or her part in favor of the government. It might
13 be an inducement to testify falsely. However, all these
14 matters are for your consideration and your consideration
15 alone, weighing in your mind along with all the other
16 relevant evidence in the case, the credibility of the
17 witnesses.

18 Now, just a few more words on this point
19 because much has been made in argument by counsel here this
20 morning to the effect that Harvey Cohen and Marsha Renee
21 Brown are extremely bad people, worthless, they ought to be
22 in prison and should not be permitted to enter into agree-
23 ments or deals by which they receive lifetime probation
24 instead of going to jail and being used as witnesses in
25 this trial.

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2 We are told, in effect, that Paglialonga was
3 a little fish and Harvey Cohen was a great whale. This may
4 be a very valid description by Mr. Serra. I won't comment
5 on it because I have no opinion as to the facts or as to
6 the guilt or innocence in this case.

7 But it is possible that that could be a valid
8 description. Now, of course, the character and the vicious
9 prior conduct of these two can and should be considered
10 by you in evaluating their truthfulness as witnesses.

11 However, members of the jury, it is not a
12 matter of your concern that these people have been allowed
13 to become cooperating individuals and testify. The grand
14 jury and the United States Attorney have the discretion
15 and power to make decisions as to who will be indicted
16 and who the witnesses will be, and you are to decide this
17 case in accordance with the facts proven at this trial.

18 If you are satisfied beyond a reasonable doubt
19 that either of these defendants have been proved guilty
20 of any count in which he or she is named, then it is your
21 duty to convict him or her, notwithstanding the fact that
22 you may believe that these guilty cooperating individuals
23 may have successfully evaded their just dessert or that
24 it was a gross inequity.

25 By the same token, if you are satisfied there

is not sufficient evidence to prove guilt of any defendant on trial before you beyond a reasonable doubt, as to any count in which he or she is named, it is your duty to acquit him or her and find a verdict of not guilty.

In deciding these issues, which are the issues before you for your decision, you are not to be concerned with whether or not it was a fair thing to do to let Marsha Renee Brown or Harvey Cohen or either of them in the expressions used here, make a deal to testify or become a cooperating witness.

It is perfectly proper for the government to accept the first cooperator to offer himself and your common sense will tell you when Cohen was arrested and offered to cooperate, there was no practical way to tell him, no, we don't want you to cooperate because you are such a bad fellow. We'd rather wait for a person with less complicity to come along and make that offer. All these things are addressed to your common sense.

The character, the bad character of Brown and Cohen, are legitimate matters for your consideration in determining whether you believe their testimony or not. But the fact they have been allowed to become cooperating individuals, the fact that doing so may have been unfair or permitted them to get away with something, is not a

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2 factor which has any bearing on the guilt or innocence of
3 the people on trial.

4 I also instruct you that Petri, who describes
5 her relationship with Mr. Paglialonga as that of being his
6 common-law wife, is an interested witness in the outcome
7 of the case. She is an interested witness and that does
8 not, of course, make her testimony in any sense unworthy of
9 belief but interest in the outcome of the case is a factor
10 which the jury may consider in weighing the testimony of
11 any witness.

R24. 12 Leaving those general matters aside, I am
13 going to turn directly to the indictment. I am discussing
14 the two counts separately. I am referring to Count 1 as
15 the conspiracy count and referring to Count 2 as the sub-
16 stantive count to distinguish it from Count 1.

17 The first count charges that the defendants
18 Richard Paglialonga and Ilene Baker and others conspired
19 with each other and with others to violate the federal
20 narcotic laws by importing cocaine into the United States
21 and distributing cocaine or possessing cocaine with intent
22 to distribute it in this country.

23 I will now read Count 1 of the indictment
24 to you.

25 The grand jury charges on or about the 1st

day of January 1975 and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York and elsewhere Richard Paglialonga and Ilene Baker, the defendants, Edward White, Marsha Renee Brown and Harvey Cohen, named herein as coconspirators but not as defendants, and others to the grand jury known and unknown, unlawfully, intentionally and knowingly did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, namely violation of Section 812, 841(a)(1), 841(b)(1)(a) and 952(a), 960(a)(1) and 960(b)(1) of Title 21 United States Code.

2: It was part of said conspiracy that the defendants and their coconspirators unlawfully, intentionally and knowingly and would and did import into the United States Schedule 2 narcotic drug controlled substances, the exact amount thereof being to the grand jury unknown, in violation of Section 12, 952(a), 960(a)(1) and 960(b)(1) of Title 21 U.S. Code.

3: It was a further part of said conspiracy that the defendants and their coconspirators unlawfully, intentionally and knowingly would and did distribute and possess with intent to distribute a Schedule 2 narcotic drug controlled substance, the exact amount thereof being

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to the grand jury unknown, in violation of Section 812,
841(a)(1), 841(b)(1)(a) of Title 21 U.S. Code.

Overt Acts. In furtherance of said conspiracy
and to effect the objects thereof, the following overt
acts, among others were committed in the Southern District
of New York and elsewhere -- and then, members of the jury,
there are about eight numbered acts here and I will read
them to you in just a few moments.

Now, in Count 1 both defendants on trial
before you here are charged with conspiracy under Title 21,
United States Code, Section 846 and let me tell you now
you don't have to remember these numbers. But it is
important that you each understand the type of conduct
which is prohibited by the statute.

That statute provides in relevant part that
any person who conspires to commit any offense prohibited
by the federal narcotic law is guilty of a crime.

The specific laws to which it is alleged
the defendants conspired to violate are Sections 812,
841(a)(1), 841(b)(1)(a), 952(a), 960(a)(1) and 960(b)(1)
of Title 18, U.S. Code. I'll come back to those in a
moment.

They are the laws which regulate the importa-
tion and distribution or possession with intent to distribute

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2 cocaine.

3 In order to convict the particular defendant
4 whose case you are considering on Count 1, each of the
5 following three essential elements must be established to
6 your satisfaction beyond a reasonable doubt as to that
7 person whose case you are then considering.

8 If your deliberations tell you that any one
9 of these three elements has not been established as to that
10 particular defendant beyond a reasonable doubt, then you
11 stop right there as to that defendant in that count and find
12 a verdict of not guilty as to that defendant on that count
13 and go on and consider the balance of the case, the other
14 defendant and the other count.

15 If you are convinced that all three elements
16 have been proved beyond a reasonable doubt as to that
17 defendant, then it is your duty to convict that defendant
18 on Count 1 and say you find a verdict of guilty.

19 These are the three elements and please listen
20 to these very carefully. Each must be proven beyond a
21 reasonable doubt.

22 First, that the conspiracy charged in Count 1
23 did in fact exist. That is, two or more of those persons
24 named therein, either as defendants or coconspirators,
25 agree together and with reach other to violate the federal

1 narcotics laws together at some point at or about the time
2 period alleged in the indictment which is mentioned as
3 being from January 1, 1975 up until the filing of the
4 indictment on March 25, 1977. That is the first element,
5 the existence of the conspiracy.
6

7 The second element which must be proven beyond
8 a reasonable doubt is that the defendant whose case you are
9 then considering knowingly and wilfully associated himself
10 or herself with the conspiracy and did so with the requisite
11 specific criminal knowledge and intent. In short, that he
12 or she became a member of the conspiracy and did so knowing-
13 ly and wilfully.

14 The third element of the crime of conspiracy
15 as charged in Count 1 is that one of the conspirators, any
16 one of them, committed in the Southern District of New York
17 or elsewhere at least one of the overt acts set forth in
18 the indictment on or about the time and place alleged.

19 Now, alternatively under this third element,
20 the government may prove an overt act took place in the
21 Southern District of New York and if so that would be
22 sufficient to satisfy the third element.

23 But apart from that, the government could
24 prove alternatively that the agreement or conspiracy was
25 made in the Southern District of New York and one overt act

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2 was later committed elsewhere than in the Southern District
3 of New York.

4 I instruct you that Jane Street and Perry
5 Street are both located in the Southern District of New York
6 However, Queens County or the John F. Kennedy Airport
7 referred to in the indictment which I will read in a moment,
8 is not in the Southern District of New York. It is in the
9 Eastern District of New York.

10 I am going to speak to you briefly about
11 each of these three elements one at a time.

12 The first element of Count 1 you must determine
13 is whether any conspiracy charged in the indictment did
14 in fact exist. What is a conspiracy? Well, for our purposes
15 in this case, a conspiracy is simply a combination or
16 agreement or an understanding reached by two or more members
17 to act together and in concert to commit the crime or crimes
18 mentioned in the indictment.

19 In this case it is charged that the conspiracy
20 had two illegal objects. One, the importation of cocaine
21 into the United States and, two, the distribution of cocaine
22 in the United States or possession of the cocaine in the
23 United States with intent to distribute it. Those are the
24 claimed objects of the conspiracy. Proof of either object,
25 if you all agree unanimously that that object was proven,

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would be sufficient.

Now, I will discuss the legal standards applicable to the crime of possession of a narcotic drug controlled substance with intent to distribute it or distribution of such a substance in connection with Count 2 of the indictment.

Count 1 does not charge the defendants with the substantive offense of actually importing the narcotic drug controlled substances. It's the illegal importation of narcotics is alleged as one of the objects of the conspiracy however and further information about that offense is necessary in connection with an explanation of the elements of Count 1.

Title 21 of U.S. Code, Section 952(a) provides in part that it shall be unlawful to import into the United States from any place outside thereof, any controlled substance.

Now, the term import is defined by Section 950(a)(1)(a) of Title 21 and it means with respect to that article, any bringing in or introduction of such article into any area of the United States.

In order for a particular defendant to be found guilty of the crime of conspiracy to violate the narcotics laws, it must appear to your satisfaction beyond

a reasonable doubt that he or she agreed whether tacitly or explicitly, whether in words or by actions, to work together with at least one other person named in the indictment -- in this case the codefendant on trial or Marsha Renee Brown or Harvey Cohen or Edward White, in order to achieve a common criminal purpose of importing and/or distributing a narcotic drug.

The gist of the crime of conspiracy is the unlawful combination or agreement by two or more people to violate the law together and the crime of conspiracy is entirely separate and distinct and different from the violation of the law or laws which may have been the object or purposes of the conspiracy.

Thus, if a conspiracy exists and an overt act was committed in furtherance of it, even if it should fail in furtherance of its purpose, the individual in it may still be convicted of the crime of conspiracy.

The government is not required with respect to Count 1 to prove that actual violation of the narcotics laws took place. That is to say, that cocaine was brought into the United States or possessed for purposes of distribution or distributed. Although that is the contention here.

The government need only prove under Count 1

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that the conspiracy or agreement came into existence at or about the time alleged and that at least one overt act was committed by a conspirator in the furtherance of its purposes and that the defendant on trial before you whose case you are then considering, was a knowing, wilful, intentional member of it. I will come to that a little later.

It must be at least two persons in a conspiracy before it becomes a conspiracy. A person acting alone in a criminal venture is not guilty of a conspiracy.

The government is not required to prove, in order to establish that a conspiracy existed, that two or more people sat down around a table and entered into a formal agreement, setting up a partnership to deal in cocaine. Indeed, it would be extraordinary if there were any such formal agreement.

Your common sense will tell you that when people in fact enter into a criminal conspiracy much is left to the unspoken understanding of the parties. Conspirators don't usually submit their agreements in writing or acknowledge them before a notary public nor do they publicly broadcast or advertise what their plans are.

From its nature a conspiracy is almost invariably secret in its origin and its execution. It is sufficient

to prove the existence of a conspiracy if two or more persons in any manner, through any contrivance impliedly or tacitly, came to an understanding to violate the law together. The express language or specific words are not required to indicate assent to or attachment to a conspiracy. Nor is it required that you should find that all of the coconspirators named in the indictment joined in the conspiracy in order to find that it existed.

The government must prove beyond a reasonable doubt the existence of the conspiracy charged in the indictment and not some other conspiracy.

As to the first element, you need only find that one of the coconspirators entered into an unlawful agreement with one or more of the other persons named in the indictment as coconspirators in order to find that the conspiracy existed.

In determining whether the conspiracy charged in this indictment actually existed, you may consider all of the evidence, the acts and the conduct of the alleged conspirators as a whole, each of them, and the reasonable inferences or conclusions to be drawn from such evidence.

If upon a consideration of all the evidence you find beyond a reasonable doubt that the minds of at least two of the alleged coconspirators met together in a

conspiratorial agreement to work together in furtherance of the unlawful scheme charged in the indictment, that is the importation, distribution or possession with intent to distribute the cocaine, then that is proof that the conspiracy existed and the first element would be satisfied.

The period charged, as I mentioned earlier, is from on or about January 1, 1975 up until March 25, 1977. It is not necessary for the government to prove that the conspiracy started and ended on those precise dates. It is sufficient if it can be proved that the conspiracy existed during that period and that an overt act was committed in furtherance thereof during that period, and that the defendant became members of the conspiracy at any point within that time.

I instruct you also as a matter of law that the conspiracy, if one existed, ended when it became known to the authorities or when it had fully accomplished its purpose. That is to say, when all the cocaine had been fully distributed or seized in the search of the apartment of Harvey Cohen and Marsha Renee Brown.

Now, the seizure in the apartment that occurred in August 1976, it may well be that that cocaine was not the cocaine connected with this conspiracy, so if the cocaine had been fully distributed prior to that date, you could

find that the date of final distribution would be the end of the period of the existence of the conspiracy without regard to the later date mentioned in the indictment.

Now, I am going to speak about the second element which also must be proved beyond a reasonable doubt. That is, whether the individual membership in the conspiracy on the part of the defendant whose case you are then considering has been shown beyond a reasonable doubt.

If you do conclude that the conspiracy as charged existed, you must then determine whether a particular defendant was a member. That is, whether he or she participated intentionally in the conspiracy with knowledge of its unlawful purpose and in furtherance of its unlawful objectives.

In order to find that a particular defendant was a member of the conspiracy, you must be convinced beyond a reasonable doubt that he or she knowingly and intentionally participated therein. Mere knowledge by a particular defendant of the existence of the conspiracy or of any illegal acts on the part of another conspirator, or mere association with one or more conspirators, is not sufficient to establish his or her membership in the conspiracy.

The government must establish beyond a reasonable doubt that a particular defendant was aware of

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2 its basic purposes and objects and the illegal nature and
3 that he or she joined and entered into the conspiracy with
4 specific purpose and intent, that is, with a purpose of
5 violating the law pertaining to cocaine.

6 So if a particular defendant with an under-
7 standing on the unlawful character of the conspiracy inten-
8 tionally engages in actions or advises or assists for the
9 purpose of furthering the illegal undertaking, he or she
10 thereby becomes a knowing and wilful participant in the
11 conspiracy and the second element may be found to have been
12 satisfied.

13 You members of the jury will recall, I think,
14 that during this trial I received some evidence subject
15 to connection. Because any case must of necessity come
16 in piece by piece. It is proper for evidence to be seen
17 in that way and the Court shall later rule whether the
18 evidence may be considered for all purposes or if not,
19 whether it can be considered for a limited purpose.

20 The evidence that I received subject to connec-
21 tion may now be received by you for whatever weight and
22 value and significance you the jury find it possesses,
23 bearing in mind that you are the sole judges of the facts.
24 You decide and resolve all factual issues. But as to
25 certain of this evidence you may consider it only for a

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2 limited purpose.

3 I will now explain that to you.

4 You will notice that most of those matters
5 as to which objection was made as to which I ruled certain
6 evidence was taken subject to connection, were objections
7 taken as to events or conversations taking place when a
8 particular defendant who made the objection, his attorney
9 made the objection, was not present at the time of the
10 conversations being testified to or the incident being
11 described.

12 As to that particular defendant, if you find he
13 or she was not present at the time of the conversation or
14 event in futherance of the conspiracy, or was not present
15 at the time of the event described, you cannot consider
16 that testimony or conversation or event as bearing on his
17 or her membership in the conspiracy. Whether he or she
18 joined the conspiracy knowingly and wilfully with knowledge
19 of at least some of its unlawful objectives, must be
20 determined as to him or her solely on the basis of what he
21 or she said or did or what took place in his or her
22 presence, and not on the basis of what somebody else did
23 when he or she was not there and not participating.

24 But all that type of evidence may be relied
25 upon by the jury and considered in connection with the

first element as far as it concerns the issue of whether or not a conspiracy existed as charged and the third element, as to whether or not an overt act was committed.

In determining whether a particular defendant knowingly and wilfully became a member of a group effort to bring the alleged cocaine to market in this District, you may consider only the evidence pertaining to his or her own acts or conduct.

It is not necessary that a particular defendant on trial before you be shown to have known all of the details of the conspiracy, or even that he or she was acquainted with all the other members. So long as he or she knew the basic general purpose of the conspiracy and acted intentionally and wilfully in furtherance of it so as to make it an undertaking which he or she desired to succeed and to help it in its stated purpose which was the importation and distribution of cocaine, and had a stake in the outcome.

START With respect a conspirator, if he or she knowingly and wilfully joined the conspiracy charge here, having knowledge of its unlawful objectives, and tending to make it something which he or she wished to succeed and having a stake in its outcome, and an overt act is thereafter committed in furtherance of the conspiracy as charged

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in the indictment while he or she remained a member of it, and if all that appears clear to the jury beyond a reasonable doubt, then his or her guilt on Count 1 would be complete.

However, if a conspirator withdraws from a conspiracy before the commission of an overt act, none having taken place during his or her membership, then an overt act committed after his or her withdrawal from the conspiracy may not be considered in proving Count 1 as against that particular conspirator whose case you are then considering.

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Withdrawal is accomplished by affirmative action, some conduct or speech by the defendant whose case you are considering to disavow the purpose of the conspiracy communicated by him or her to his or her coconspirators.

A conspirator who has withdrawn from the conspiracy cannot be held criminally liable for whatever occurred after his or her withdrawal.

put then go on

The burden of establishing withdrawal lies upon the defendant once the jury is satisfied beyond a reasonable doubt that he had joined the conspiracy knowingly and wilfully. Such burden may be discharged by the preponderance of the credible evidence. It doesn't require proof of withdrawal beyond a reasonable doubt.

Stand here again

In considering directly the case of Mr. Paglialonga, if he joined the conspiracy knowingly and wilfully and an overt act was committed in furtherance thereof and if he thereafter withdrew, he still may be convicted of the crime of conspiracy in violation of Count 1, based on his membership prior to his withdrawal and the commission of an overt act by one or more of the coconspirators prior to his withdrawal.

Specifically I instruct you that you may, but you need not infer from the evidence in this case that Mr. Paglialonga knowingly went to South America on the first trip with Miss Marsha Renee Brown, intending to protect her while she engaged in importation of cocaine on the first trip, and did so with the intention of receiving some of the proceeds from the sale of the cocaine or some cocaine or both, then you may find that he thereby made himself a member of the conspiracy and made it something that he wished to succeed and had a stake in the outcome.

And if he knowingly and wilfully did so you may find that all of the elements of the crime have been proved against Paglialonga, then he may be convicted on Count 1 even if you are satisfied of his later activities in connection with the second trip were the product of

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2 coercion and duress and were not intentional or that he
3 withdrew when Edward White was arrested.

4 ~~The third element of the conspiracy charge~~
5 is that it must appear to your satisfaction beyond a
6 reasonable doubt that at least one of the conspirators
7 named in the indictment -- it doesn't have to be either
8 of these defendants -- committed at least one overt act as
9 listed in the indictment. I am going to read those overt
10 acts to you in a moment. I ask that you pay close atten-
11 tion to them.

12 Overt is an old word which simply means open
13 or observable. An act is overt when somebody could have
14 seen or heard it happen if they had been there.

15 In order to find that the third element has
16 been satisfied, you must find beyond a reasonable doubt
17 that at least one of the listed overt acts was committed.

18 An overt act is any step or action or conduct
19 which is taken to achieve, accomplish or further the objective
20 of the conspiracy.

21 The purpose of requiring proof of an overt
22 act is that parties might conspire and agree to violate
23 the law and after they reach that agreement, they may change
24 their minds and may do nothing in which event it wouldn't
25 constitute a crime at all.

But an overt act which is an essential element of the crime of the conspiracy need not be a criminal act, nor need it be the crime which is the object of the conspiracy.

I will now read the overt acts.

In furtherance of such conspiracy and to effect the objects thereof the following overt acts among others were committed in the Southern District of New York and elsewhere:

1, on or about August 29, 1975, Marsha Renee Brown and Edward White, the defendant Richard Paglialonga went to Lima, Peru, to obtain cocaine.

I might mention parenthetically the government contends that Richard Paglialonga left California to go to Peru so that act may not be treated as one which took place in this District if it happened.

2, that in or about early September 1975 in Lima, Peru, the defendant Edward White obtained approximately one pound of cocaine.

3, on December 24, 1975, Harvey Cohen and the defendant Richard Paglialonga entered Peru from Ecuador.

4, on January 6, 1976 in Curacao, the defendant Ilene Baker received a telephone call from New York, New York.

5, on January 6, 1976, Harvey Cohen flew from Quito, Ecuador to Curacao carrying approximately one pound of cocaine secreted in a leather suitcase.

6, on January 8, 1976, the defendant Ilene Baker flew from Cuarcaco to John F. Kennedy Airport in Queens, New York, carrying approximately one pounds of cocaine secreted in a leather suitcase.

7, on January 8, 1976, in Curacao, the defendant Richard Paglialonga received a telephone call from New York, New York.

8, in or about January 19, 1976, the defendant Ilene Baker delivered approximately one pound of cocaine to 39 Jane Street, New York, New York.

That completes the reading of the overt acts.

It is no necessary for the government to prove each member of the conspiracy committed or participated in any particular overt act. Since the act of any one of the conspirators done in furtherance of the conspiracy becomes the overt act of all of the members.

The government is not required to prove each of the overt acts alleged. It is sufficient if it proves the commission of at least one them at or about the time alleged.

In connection with these overt acts, one of

1 matters which must be proved is the commission of an overt
2 act in the Southern District of New York or the conspiracy
3 was formed here. Either, at least one of those facts
4 must be clear to your satisfaction, otherwise you must find
5 both defendants not guilty on the conspiracy count.
6

7 39 Jane Street is in the Southern District
8 of New York and so is Perry Street and John F. Kennedy
9 Airport is not in the Southern District of New York. The
10 rest of the overt acts are clearly not committed in the
11 Southern District of New York.

12 If the government proves one overt act in
13 furtherance of the conspiracy, that will be sufficient
14 even if that overt act was not committed in the Southern
15 District of New York, providing you find the conspiracy
16 was formed, that is the agreement was reached, in Cohen's
17 and Brown's apartment in the Southern District of New York.

18 Now, as to the burial of the cocaine in Peru,
19 Mr. Paglialonga argues that if he did so, it was done of
20 necessity, to avoid the Peruvian police and not in order,
21 as the government contends, to protect the cocaine or
22 further the conspiracy.

23 Necessity is a defense to a crime and it has
24 the general meaning of some unavoidable circumstance or
25 condition or fact which leaves a defendant no real choice

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of action.

In connection with the question of whether he acted wilfully in furtherance of the conspiracy, Mr. Paglialonga has argued through his attorney that his actions in burying the cocaine in Peru were not intended to preserve the cocaine in order to further the conspiracy but rather were done solely out of fear or necessity, because he believed that the Peruvian police would apprehend him and if they found him with the cocaine, he would be caught up in the Peruvian system of justice.

This argument raises a factual question for your determination and you may consider it like all arguments in the case and apply your own common sense to the entire situation.

If Mr. Paglialonga knowingly and wilfully took the first trip to Peru intending when he left California to aid and assist Marsha Renee Brown in any material way by acting either as her protector or in any other significant fashion, and in return for it he was to get money for doing so, then you may but you need not infer from that conduct alone that he knowingly and wilfully became a member of the conspiracy and made it something that he wished to succeed and had a stake in the outcome.

You may, although you need not consider that

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as sufficient proof to support a verdict of guilty on Count 1 as far as concerns this defendant. Even if as far as the burial of the cocaine you think that the only reason he did so, if he did it, was not to hide it and preserve it for future activity but rather to make certain that he wasn't caught with it and locked up in the Peruvian jail. Of course, what I just said to you does not detract from the requirement that the government prove the second and third element, the first second and third elements, each beyond a reasonable doubt as I already said to you.

But in considering the second element you may consider his conduct prior to the burial as I have just indicated to you.

A word about the expression coercion and necessity which have been used in some of the arguments.

The defendant Paglialonga claims that his second trip to Peru was not wilfully and knowingly done in furtherance of the conspiracy but rather he claims that he and his common-law wife, Miss Petri, were threatened by successive telephone calls from a male person that they did not know and that the only reason he went back the second time to get the cocaine which he buried was because of the coercion resulting from these telephone calls and because he was the only person who knew where it was.

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2 Naturally, it is not claimed nor could it be
3 claimed that the telephone calls coerced any conduct of
4 Mr. Paglialonga which took place before he started receiv-
5 ing the calls. The defense of alleged coercion is not
6 asserted in this trial in connection with his first trip
7 to Peru.

8 In considering the second trip to Peru you
9 may properly give consideration to the defense of coercion
10 which I am about to explain to you.

11 In order to be guilty of criminal conduct it
12 must appear that such criminal activity was the product of
13 knowing, deliberate intentional activity on the part of
14 the defendant whose case you are considering. That is to
15 say that he or she had a deliberate purpose to violate
16 the law.

17 If you find there was some measure of coercion
18 in connection with the second trip to Peru, or some neces-
19 sity for the burial of the cocaine on the first trip, you
20 must examine whether this coercion or necessity was so over-
21 powering as to overcome the lawful intentions of Mr. Paglia-
22 longa.

23 In considering the sufficiency of this evidence
24 you should consider the proper response to coercion is to
25 go to the authorities and not to submit or engage in illegal

conduct. At this point I wish to make clear that this matter of coercion is a separate issue, to be considered separately by you concerning the activities of Mr. Paglialonga on or after the date on which he or his common-law wife received the phone calls.

It is a factor to go into your consideration as to whether or not the government has proved the specific criminal intent of the defendant Paglialonga on and after the commencement of the telephone calls.

I instruct you at this time that in order for coercion to provide a legal excuse for criminal conduct, the compulsion must be present and immediate and of such a nature as to induce the well-founded fear of impending death or serious bodily injury. There must be no reasonable opportunity to escape by compulsion without committing the crime or participating in the commission of the crime.

Acts done under such coercion or compulsion are not done wilfully, knowingly and intentionally.

So anyone who acts under those circumstances must be found free of any criminal intent as to those actions.

However, if the nature of the coercion is such that there is a reasonable opportunity to escape the compulsion either by going to the authorities or by escaping in some other fashion, then the claim of coercion is not

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2 available. If the evidence in this case leaves you with
3 a reasonable doubt that the defendant at the time and the
4 occasion of the second trip to Peru acted wilfully and
5 voluntarily and not as a result of compulsion or duress
6 then you may not convict the defendant based on that
7 activity on his part.

8 If, however, there is merely some degree of
9 coercion that does not rise in his mind to a level of
10 present, immediate threat of death or serious bodily injury,
11 then coercion will not be a legal excuse for the commission
12 of a criminal act.

13 In this connection you are to look into the
14 mind of Mr. Paglialonga and determine what his intent was.
15 We talked about the particular defendant and not about
16 any hypothetical person or reasonable person or other person,
17 what that person might think.

18 So much for Count 1. If you are convinced
19 beyond a reasonable doubt that the government has proven
20 all of these three essential elements which I previously
21 defined to you beyond a reasonable doubt, then it is
22 your duty to convict the particular defendant whose case
23 you are then considering on that count.

24 If as to that defendant you are not satisfied
25 beyond a reasonable doubt as to any one of these elements,

then you must return a verdict of not guilty as to that person on Count 1.

I am going to turn to Count 2 which I call the substantive count. I will read that to you.

Count 2, the grand jury further charges in or about January 1976 in the Southern District of New York Richard Paglialonga, the defendant, unlawfully, intentionally and knowingly distributed and possessed with intent to distribute a Schedule 2 narcotic drug controlled substance, to wit, approximately four ounces of cocaine hydrochloride.

This count charges a violation of Section 841(a)(1) of Title 21 which states in relevant part, "It shall be unlawful for any person knowingly and intentionally to distribute or possess with intent to distribute a controlled substance."

Section 821 of Title 21 creates a schedule or a list of controlled substances and cocaine or cocaine hydrochloride -- the same thing -- is listed in Schedule 2 as a controlled substance.

I instruct you as a matter of law that cocaine hydrochloride is under that statute a controlled substance, possession of which with intent to distribute or the distribution of which, would be a violation of Section 841(a)(1).

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2 Before you may find Mr. Paglialonga guilty
3 on Count 2, you must be convinced that the government ~~has~~
4 proven beyond a reasonable doubt the following three
5 elements. These are three different elements.

6 First, on or about the date alleged in the
7 Southern District of New York, Richard Paglialonga did ~~did~~
8 distribute or possess with the intent to distribute, a
9 narcotic drug controlled substance, that's the cocaine.

10 Second, that on that occasion Mr. Paglialong
11 did so unlawfully, wilfully and knowingly and, third, that
12 the substance distributed or possessed with intent to
13 distribute was in fact cocaine.

14 Turning to the first element, in order to
15 convict on the substantive count, you must find beyond a
16 reasonable doubt that this defendant distributed cocaine
17 or possessed it with intent to distribute at or about the
18 date claimed.

19 Well, what do these words mean, distribute
20 or possess with intent to distribute? You will notice they
21 are stated in the alternative. You may find the first
22 element satisfied if you are satisfied beyond a reasonable
23 doubt either that he distributed it or possessed it with
24 intend to distribute it.

25 There is no evidence in this case that he

distributed it. It is the government's contention that he possessed four ounces of cocaine out of the shipment with intent to distribute.

I instruct you that the term distribute means the actual or attempted transfer of the controlled substance. Transfer in this context would be the sale of the controlled substance, which is cocaine for money and that would constitute a distribution.

The phrase possess with intent to distribute has its common everyday meaning. It is to have something in one's control physically, either in his pocket or hand and the attempt refers to a person's state of mind. In turn, possess with intent to distribute can be fairly said to mean to control the package of cocaine in a state of mind to transfer to some other person.

The second element requires that the government prove beyond a reasonable doubt with regard to the second count that the defendant, Mr. Paglialonga, acted unlawfully, wilfully and knowingly. You recall I used those words several times in connection with the first count. The same definition which I am about to give you will apply to your consideration as to Count 1. They are very important words. What do they mean?

Let's say first what they don't mean. They

don't mean that the government must show that the defendant knew that he was breaking a particular statute before he may be convicted of a crime.

They don't mean that the government must show that he intended to profit by the matter at the expense of somebody else nor does it have anything to do with his personal or private reasons for violating this statute.

Because if after considering all the evidence and my instructions to you, you come to the conclusion that the defendant violated the statute then in that effect his personal or private reasons for doing so are of no consequence as far as guilt is concerned.

I instruct you that these words knowingly and wilfully mean deliberately and intentionally. In other words, you must be satisfied beyond a reasonable doubt that the defendant acted with knowledge, consciously and with the free exercise of his will or her will. The words knowingly and wilfully are opposed to the idea of an inadvertent or accidental occurrence.

An act is done knowingly if it is done voluntarily and purposely and not because of mistake, accident or negligence or some other innocent reason.

An act is done wilfully if it is done knowingly and purposely and not because of mistake.

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2 As to the meaning of the word unlawfully, I
3 think I told you that it is not necessary that he knew that
4 he was violating any particular statute. It is sufficient
5 if you are convinced beyond a reasonable doubt that he
6 was aware of the general unlawful nature of the importation
7 or possession or dealing with cocaine.

8 Knowledge and intent exist in the mind. You
9 can't look into somebody's mind now and see what was going
10 on sometime past. The only way you have for arriving at
11 a decision as to these matters of intent and knowledge is
12 to take into consideration all the facts and circumstances
13 shown by all the evidence, including the exhibits and
14 determine from such facts and circumstances whether the
15 requisite knowledge and intent were present at the time
16 in question.

17 Direct proof is not necessary. Knowledge and
18 intent can exist in the mind and can be inferred from all
19 the surrounding circumstances.

20 As to the third element of the count, the
21 government must prove beyond a reasonable doubt that the
22 substance which was possessed with intent to distribute,
23 if there was one, was in fact cocaine.

24 To meet its burden, the government need not
25 produce the chemical analysis. You have a stipulation that

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2 Mr. Roger Golden, the chemist who testified to certain
3 materials seized from Cohen was cocaine and traces of
4 cocaine were found on the larger envelopes which Cohen
5 testified he divided the cocaine into ounces. Just as with
6 any other component of the crime, the existence and nature
7 of the narcotics may be proved either by direct or circum-
8 stantial evidence.

9 In this case there is no analysis of the
10 particular one-ounce bags of cocaine said to have been
11 possessed by Mr. Paglialonga. You do have the testimony
12 of Cohen that he broke down the contents of the larger en-
13 velopes into one-ounce packages on a single occasion in his
14 apartment and carried them upstairs to Marsha Renee Brown,
15 sealed them in one-ounce envelopes and they kept them to-
16 gether until a later time.

17 If you believe this testimony, if you believe
18 that some of the envelopes were ultimately sold to DeRosa
19 by Cohen containing cocaine came from this shipment, then
20 you may infer that the rest of the envelopes made at the
21 same time from the same larger containers by Cohen did con-
22 tain cocaine.

23 But that's an issue of fact to be resolved
24 by the jury based on all the evidence. If you are not
25 convinced that the substance was cocaine, then you must

2 return a verdict of not guilty on Count 2.

3 Just a few more words, members of the jury,
4 and then I am finished. You have been very attentive and
5 I appreciate it.

6 Under your oath as jurors you cannot allow
7 consideration of punishment or possible sentence which might
8 be inflicted on a defendant if convicted to enter into your
9 verdict or deliberations in any way or in any sense to
10 affect your verdict.

11 The duty of imposing sentence rests solely
12 on the Court. Your function is to weigh the evidence in
13 the case and determine separately as to each count as to
14 each defendant named therein, whether or not that defendant
15 has been proven guilty beyond a reasonable doubt.

16 You do so solely on the basis of the evidence
17 and the law. You are to decide this case on the evidence
18 and the evidence alone and must not be influenced by any
19 assumption or guesswork or conjecture of sympathy or any
20 inference not warranted by the facts.

21 If you fail to find beyond a reasonable doubt
22 that the law has been violated by the particular defendant
23 as charged, you should not hesitate for any reason to find
24 a verdict of acquittal or not guilty.

25 On the other hand, if you should find that the

law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty as a clear warning that crimes of this character may not be committed with impunity. The public is entitled to be assured of this.

A word about deliberating. Each of you is entitled to your own opinion. You should express your opinions to the other jurors, that is the purpose of jury deliberation, to express and exchange your views, discuss and consider the evidence and listen to the arguments of the other jurors and present your own views and consult with one another and together to reach a just and fair verdict based wholly on the evidence if you can do so without violation of your individual judgment.

But each one of you must decide the case for himself or herself after the discussion with your fellow jurors. You shouldn't hesitate to change your opinion if, after discussion, your opinion appears erroneous in the light of this discussion and the evidence and consideration of the law.

However, if after deliberating and carefully weighing all the evidence and listening to the arguments of your fellow jurors, any one of you entertains a conscientious view which differs from the rest, you are not to

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2 give up your judgment and go along simply because you are
3 outnumbered or outweighed. The final vote of each one of
4 you should reflect your individual conscientious judgment
5 as jurors as to how the case should be decided.

6 As to any count and as to any defendant named
7 therein, in order to find a verdict, the jury must be
8 unanimous as to that count and that defendant. You make
9 three separate verdicts and any verdict must be unanimous.

10 On this question of unanimity, members of
11 the jury, there is an additional important point I want
12 to call to your attention.

13 In order to find a particular defendant guilty
14 you must all be agreed as to the same theory or factual
15 premise for guilt where there are alternatives available
16 to you.

17 To take an example, if some of you are con-
18 vinced that Paglialonga committed the crime of conspiracy
19 on his first trip to Peru and the other half is convinced
20 that he did not but that he committed the crime of con-
21 spiracy only by going back to Peru on the second trip,
22 that would not be sufficient for you to return a guilty
23 verdict on Count 1 because there is no unanimous agreement
24 within the jury as to the factual premise for guilt or the
25 theory of guilt.

Only if you all agree and are convinced as to the same factual premise or theory beyond a reasonable doubt can there be a verdict of guilty on the particular count you are then considering.

Another example. The government could either have proved the conspiracy was formed in New York, or formed elsewhere and that at least one overt act was committed in the Southern District of New York.

If some of you think it was formed on Jane Street or Perry Street but there was no overt act here and others of you think it was formed someplace else but there was one overt act here, you wouldn't be unanimous because you aren't agreed on the same factual premise or theory.

If you have that kind of difference among yourselves, then you must report yourselves as deadlocked, you can't reach a verdict unless you are unanimous not only as to the question of guilt but unanimous as to the question of the basis for guilt, where alternative bases are present in the contentions of the government.

I ask you to take your time in your deliberations, to be polite and respectful to each other and to listen and express your own views and listen to the views of others.

You don't have to do any shouting because

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you don't really learn anything or improve your work when you do that.

In your deliberations you may want to see the exhibits or some of them. If you do, just send out a note.

You can also send out a note to have testimony read, but I urge you not to do that unless you have exhausted your collective recollection.

If there is anything about my instructions that creates an uncertainty for you and you want any part of my instructions read to you again, send out a note and tell us what you want.

All notes will come from the foreman of the jury. I instruct you that in writing a note you are not to say in there how the vote of the jury may be divided. The note should simply state what the jury wants the Court to provide or send in or do. That is all.

When you have reached a verdict you inform the marshal that you have reached a verdict, come out into court and announce your verdict.

Now, let me state in closing, your oath covers your duty, that is, without fear or favor to anyone to well and truly try the issues in this case to the defendant and the government of the United States and a true

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ards

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verdict based solely on the evidence and the Court's in-

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structions as to the law.

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5

It is important as to each of the defendants
and it is important to the government and it is important
to you.

6

7

8

Now, at this time I would like to have the
marshal sworn.

9

(Marshal sworn by the clerk)

10

(Alternate jurors excused)

11

12

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16

THE COURT: I am going to ask the rest of
you to stay right in the jury box and don't discuss the
case for just a few more minutes while I confer in the
next room with the attorneys to see if there is any
additional instruction which they may wish to have me give
you at this time.

17

(The following took place in the robing room)

18

19

THE COURT: Mr. Bentley, any additional re-
quests?

20

21

MR. BENTLEY: No, your Honor, I don't have
any.

22

23

THE COURT: Mr. Serra, any additional requests
or exceptions which you haven't previously been granted?

24

25

MR. SERRA: No, your Honor. The exception
has been noted with respect to the charge in regard to

1 ards

899

2 withdrawal. Other than that I have nothing more.

3 THE COURT: I will instruct the clerk to mark
4 all requests as exhibits simply to make sure that they are
5 preserved.

6 Miss Rowan, any additional exceptions?

7 MS. ROWAN: I think not.

8 THE COURT: Thank you all.

9 May it be agreed that if they ask for exhibits
10 in a note that they may just be sent in to them?

11 MR. SERRA: It is so understood and agreeable.

12 MS. ROWAN: I would like to look at the
13 exhibits before they go in to make sure there is nothing
14 extraneous.

15 THE COURT: Attend to that now as soon as the
16 jurors go. Would you be kind enough to do that?

17 (In open court)

18 THE COURT: Besides asking for any exhibits,
19 if you want them, you may also ask for a copy of the
20 indictment if you wish. However, I caution you once more
21 that the indictment is not evidence of anything. It is
22 merely an accusation and that is all.

23 All right, members of the jury, please return
24 to the jury room and commence your deliberations.

25 (Jury left the courtroom at 3:30 p.m.)

JUDGE CANNELLA

OTHER OFFENSE MO ☐ JUDGE/MAGISTRATE Assigned U.S. vs. **PAGLIALONGA, RICHARD**
OTHER MISDEMEANOR Mis ☐ 0208 1 0843
FELONY Fel ☒ District Office (LAST, FIRST, MIDDLE)

Case Filed Mo Day 03 25
No. of Defs *05
Yr 77 Doc# 0210

U.S. TITLE/SECTION 21:846
21:812, 842(a)(1) & 841(b)(1) A)
OFFENSES CHARGED
Consp. to violate Federal Narcotics Laws
Distr. & possess. of Cocaine, II.
ORIGINAL COUNTS
1
3

U.S. MAG. CASE NO.
RAIL
AMT
Set
\$ 000
Date
Rail Not Made
Status Changed (See Docket)
Disposition of Charges
7-27-77
X Convicted
Acquitted
Dismissed
On Government

II. KEY DATES & INTERVALS
ARREST of U.S. Custody Reg. High Bail Date Information 3-25-77
INDICTMENT X
ARRAIGNMENT 3-31-77
TRIAL
Trial Set For
Your Dire
Final Begin 7-20-77
Trial Ended 7-27-77

MAGISTRATE
Search Warrant Issued Return
Summons Issued Served
Arrest Warrant Issued
COMPLAINT
OFFENSE (In Complaint)
DATE
INITIAL/NO
INITIAL APPEARANCE DATE
PRELIMINARY EXAMINATION OR REMOVAL HEARING
Date Scheduled
Date Held
WAIVED NOT WAIVED
INTERVENING INDICTMENT
Tape Number
OUTCOME:
HELD FOR GJ OR OJ CEEDING IN THIS DISTRICT
HELD FOR GJ OR OJ CEEDING IN DISTRICT

U.S. Attorney or Asst Allen R. Bentley 791-1929
ATTORNEYS Defense ☒ CJA ☒ Ret. ☐ Waived ☐ Self ☐ None / Other
Ronald Gene Wohl (LOCAL COUNSEL) Serra, Pereles
1350 Ave. of Americas NYC 473 Jackson St.
San Francisco
Cannella

* Show last names and suffix numbers of other defendants on same indictment/information
White-01, Baker-03, Lacey-04, Thompson-05
DATE (DOCUMENT NO.) PROCEEDINGS
3-25-77 Filed Indictment.....Metzner, J.
3-31-77 Deft. not present (B/W Issued). Court directs a not guilty plea be entered. Case assigned to Cannella, J. for all purposes.....Metzner, J.
3-25-77 Bench warrant issued....
5-2-77 Filed warrant of arrest with marshals return..Deft appeared before U.S.Mag. and released on \$10,000 at 10% bond....
5-19-77 Filed affdvt. & notice of motion for a continuance of trial date.....Ret. 5-23-77...
7-5-77 Filed Govt's requests for the voir dire.
7-13-77 Filed Govt's requests to charge.

CONTINUED ON PAGE NO. 2.

JS-3
IN off

DATE 77 CR 210	IV. PROCEEDINGS (continued) (DOCUMENT NO.)	PAGE TWO CANNELLA, J	V. EXCLUDABLE DELAY Interval Excludable (a) (b) (c)
7-15-77	Filed Govt's Affidavit and notice of motion for an order authorizing unsealing of an envelope containing a passport issued to Richard Paglialonga.		
7-15-77	Filed Govt's Memorandum of law in support of its motion authorizing unsealing of an envelope containing a passport issued to Richard Paglialonga.		
7-20-77	DEFTS Richard Paglialonga (Atty. J. Tony Serra present) Pleads not guilty. \$10,000 PRB secured by \$1,000. bail Ilene Baker (Atty Barbara Ann Rowan present) William Lacey (Atty. O.T. Wells present.) JURY TRIAL BEGUN.		
7-21-77	TRIAL CONT'D.		
7-22-77	TRIAL CONT'D.		
7-25-77	TRIAL CONT'D.		
7-26-77	TRIAL CONT'D. DEFT Lacey's motion for acquittal under Rule 29A is granted as to count 1 ONLY. Lacey's motion for Mistrial on count 2 is GRANTED. Bail cont'd. RETRIAL BY JUDGE CANNELLA,.		
7-27-77	TRIAL CONT'D & CONCLUDED. JURY VERDICT Deft Paglialonga GUILTY on Ct. 1. Not guilty on Ct. 3. P.S.I. ordered. SENT adj'd until 9-7-77. BAIL CONT'D. DEFT BAKER -NOT GUILTY. BAIL EXONERATED. BRIENT, J		
7-28-77	Filed Appearance Bond in the sum of \$10,000 Deposit Receipted for \$1,000 (attached is copy of Waiver of Removal Hearing Northern District of California and Dated: 5-11-77)		
9-12-77	FILED TRANSCRIPT OF RECORD OF PROCEEDINGS DATED: July 20, 21, 22, 25, 26, 1977.		
9-12-77	FILED TRANSCRIPT OF RECORD OF PROCEEDINGS DATED July 27, 1977.		
9-30-77	Filed Judgment (Atty. Ronald G. Wohl, present) The deft. is committed for imprisonment for a period of TWO and ONE HALF YEARS (2½) Pursuant to 841 of Ti. 21, U.S. Code, deft is placed on Special Parole for a period of THREE YEARS, to commence upon expiration of confinement.. Bail pending appeal fixed in the amount of \$2,500 cash or surety.. Deft. has until 4 p.m. today to post bail pending appeal..... Briant, J..... Ent. 10-3-77 Oct. 3-77...		
10-3-77	Issued commitment and copies.....		
10-3-77	Filed NOTICE OF APPEAL of deft to USCA 2nd Circuit from Judgment filed on 9-30-77. Copy mailed to atty for deft J. Tony Serra, 473 Jackson St. San Francisco, California and copy for U.S. Atty. and copy to local counsel, Ronald Gene Wohl, 1350 Ave. of Americas, NYC		

CONTINUED ON PAGE NO. 3.

DATE	RECEIPT NUMBER	O.D. NUMBER	DATE	RECEIPT NUMBER	O.D. NUMBER

DOCKET CONTINUATION SHEET

77 CR 210

PLAINTIFF USA	DEFENDANT RICHARD PAGLIALONGA	DOCKET NO. 77 CR 210 PAGE 3 OF PA
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DATE	NR.	PROCEEDINGS	CANNELLA, J
09-30-77		Filed Bond Pending Appeal, in the sum of \$2,500.00 Unsecured.	
10-25-77		Filed notice that the original record on appeal appeal has been certified and transmitted to the U.S.C.A.	
11-07-77		Rec'd from chambers Filed Govt's requests to charge	
11-11-77		Filed transcript record of proceedings dtd: 9-30-77	
11-11-77		Filed notice that supplemental record on appeal has been certified and transmitted to USCA 2nd Circuit this day.	

DEFENDANT

Richard Paglialonga Southern District of New YorkDOCKET NO. 77 Cr. 210 CLB**JUDGMENT AND PROBATION/COMMITMENT ORDER**In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
9	30	'77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Ronald Gene Wohl

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTYThere being ~~XXXXX~~ verdict of☐ NOT GUILTY. Defendant is discharged☒ GUILTY.FINDING &
JUDGMENTDefendant has been convicted as charged of the offense(s) of conspiracy to violate federal
narcotic laws. (Title 21, U.S. Code, §§846, And 963.)SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of:

TWO (2) and ONE-HALF (1/2) YEARS.Pursuant to §841 of Title 21, U.S. Code, defendant is placed on Special Parole for a period of THREE (3) YEARS, to commence upon expiration of confinement.Bail pending appeal fixed in the amount of \$2,500 cash or surety.
Defendant has until 4 p.m. today to post bail pending appeal.SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATIONCOMMITMENT
RECOMMEN-
DATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

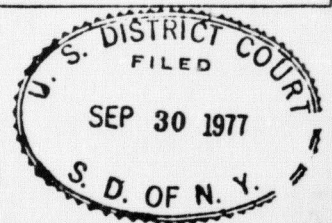
It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge☐ U.S. MagistrateCharles L. Bryant

Charles L. Bryant

Date

9-30-77

ARB:Ind
77-0380
02-1484

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

77 CRIM 0210

UNITED STATES OF AMERICA,

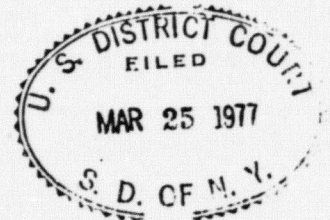
-v-

EDWARD WHITE,
RICHARD PAGLIALONGA,
ILENE BAKER,
WILLIAM LACEY and
MILTON THOMPSON, a/k/a "Skip,"

Defendants.

INDICTMENT

77 Cr.



COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of January, 1975, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, EDWARD WHITE, RICHARD PAGLIALONGA, ILENE BAKER, WILLIAM LACEY and MILTON THOMPSON, a/k/a "Skip," the defendants, Oscar Broggi, Marcel Ferreyros, Marsha Renee Brown and Harvey Cohen, named herein as co-conspirators but not as defendants, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, namely, violations of Sections 812, 841(a)(1), 841(b)(1)(A), 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

2. It was a part of said conspiracy that the defendants and their co-conspirators unlawfully, intentionally and knowingly would and did import into the United States Schedule II narcotic drug controlled substances, the exact amounts thereof being to the Grand Jury unknown, in violation of Sections 812, 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

MICROFILM

MAR 25 1977

3. It was a further part of said conspiracy that the defendants and their co-conspirators unlawfully, intentionally and knowingly would and did distribute and possess with intent to distribute Schedule II narcotic drug controlled substances, the exact amounts thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. On or about August 29, 1975, Marsha Renee Brown and the defendants EDWARD WHITE and RICHARD PAGLIALONGA went to Lima, Peru, to obtain cocaine.
2. In or about early September 1975, in Lima, Peru, the defendant EDWARD WHITE obtained approximately one pound of cocaine from Oscar Broggi and Marcel Ferreyros.
3. On September 5, 1975, in Lima, Peru, Oscar Broggi and Marcel Ferreyros drove to a garage which contained cocaine paste and equipment used to convert cocaine paste into cocaine hydrochloride.
4. On December 24, 1975, Harvey Cohen and the defendant RICHARD PAGLIALONGA entered Peru from Ecuador.
5. On January 6, 1976, in Curacao, the defendant ILENE BAKER received a telephone call from New York, New York.
6. On January 6, 1976, Harvey Cohen flew from Quito, Ecuador to Curacao, carrying approximately one pound of cocaine secreted in a leather suitcase.

7. On January 8, 1976, the defendant ILENE BAKER flew from Curacao to John F. Kennedy Airport in Queens, New York, carrying approximately one pound of cocaine secreted in a leather suitcase.

8. On January 8, 1976, in Curacao, the defendant RICHARD PAGLIALONGA received a telephone call from New York, New York.

9. In or about January 1976, the defendant ILENE BAKER delivered approximately one pound of cocaine to 39 Jane Street, New York, New York.

10. In mid-January 1976, at 39 Jane Street, New York, New York, the defendants WILLIAM LACEY and MILTON THOMPSON, a/k/a "Skip," gave approximately one ounce of cocaine to Marsha Renee Brown, Harvey Cohen and the defendant RICHARD PAGLIALONGA.

(Title 21, United States Code, Sections 846 and 963.)

COUNT TWO

The Grand Jury further charges:

In or about January 1976, in the Southern District of New York, WILLIAM LACEY and MILTON THOMPSON a/k/a "Skip," the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately one-half pound of cocaine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges

In or about January 1976, in the Southern District of New York, RICHARD PAGLIALONGA, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately four ounces of cocaine hydrochloride.

(Title 21, United States Code, Section 812, 841(a)(1) and 841(b)(1)(A).)

COUNT FOUR

The Grand Jury further charges:

On or about the 1st day of February, 1977, in the Southern District of New York, EDWARD WHITE, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 70 pounds of marijuana in the form of hashish.

(Title 18, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

Foreman
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

4-12-77

AUSA BENTLEY

DEPT. ILENE BAKER (ATTY. PRESENT) BARBARA ANN RUMAN

PTE HELD AND ADJOURNED TO 4-25-77 AT

11 AM R. 1105.

D

BAIL CONT'D

CANNELL, J.

2

AUSA BENTLEY

4-13-77

DEPT. WILLIAM LACEY - (ATTY. PRESENT) (T. WELLS
AND BARRY M/C

D BAIL FIXED IN THE SUM OF \$5000.00 UNDER SURETY

F/P. DEPT. TO SURRENDER PRISONER

10 DAYS TO MAKE BAIL

CANNELL, J.

AUSA BENTLEY

APR 25 1977

BAKER.

DEPT. AWAILED APPEARANCE (ATTY. PRESENT) BARBARA ANN RUMAN

PTE HELD AND CONCLUDED - TURNING ON

SUPPRESSION OF EVIDENCE ON THURS 5-5-77

AT 10 AM R. 2704 -

CANNELL, J.

(RW)

AUSA BENTLEY

APR 26 1977

DEPT. LACEY - (ATTY. PRESENT) PTE HELD AND CONCLUDED.

TURNING ON THURS 5-5-77 AT 10 AM R. 2704.

BAIL CONT'D -

CANNELL, J.

(RW)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

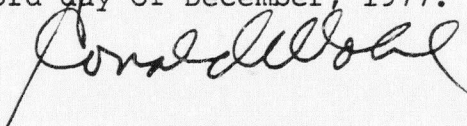
SHIRLEY LAVENDER, being duly sworn, deposes and
says:

That deponent is not a party to the action, is
over 18 years of age and resides at Brooklyn, New York.

That on the 23rd day of December, 1977, deponent
served the within APPENDIX upon the Hon. ROBERT B. FISKE, JR.,
United States Attorney for the Southern District of New York,
Attention: ALLEN R. BENTLEY, Assistant United States Attorney,
attorney for the UNITED STATES OF AMERICA, at United States
Courthouse Annex, One St. Andrew's Plaza, New York, New
York 10007, the address designated by said attorney for that
purpose, by depositing a true copy of same enclosed in a post-
paid properly addressed wrapper, in an official depository under
the exclusive care and custody of the United States Postal
Service within the State of New York.

Sworn to before me this

23rd day of December, 1977.



RONALD WOHL
Notary Public State of New York
No 30-9716920
Qualified in Nassau County
Commission Expires March 30, 1978


SHIRLEY LAVENDER